IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1425 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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THAKKAR THAKARSIBHAI DEVRAM BHAI - Appellant(s)
Versus
GOVINDJI KANAJI BHATI & 6 - Defendant(s)

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Appearance :
MR DK ACHARYA for Appellant(s) : 1,
MR KB PUJARA for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2, 4,
MR RR MARSHALL for Defendant(s) : 3,
None for Defendant(s) : 5 - 7.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal(Main), Banaskantha at Palanpur passed in M.A.C.P. No.136 of 1982 dated 8th March, 1985 whereby the Tribunal partly allowed the said petition.

2.0 The brief facts of the case are that on 11.06.1981, when the present opponent No.1 was traveling as a labourer in a truck driven by

present opponent No.2 and owned by the present appellant, the said truck met with an accident with a truck driven by present opponent No.4. On account of the said accident, opponent No.1 received serious bodily injuries, and hence, he filed a petition claiming an amount Rs.1,00,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Learned Advocate for the appellant has submitted that the Tribunal ought not to have exonerated opponent No.3-Insurance Company from the liability to satisfy the claim. In support of his case he has placed reliance on following decisions,

1. ***"National Insurance Company Ltd. Vs. Swaran Singh and Others"*** reported in (2004)3 SCC 297[2004 ACJ 1].

2. ***"Manguben Wd./O. Dhiraji S. Parmar &***

Ors. Vs. Bhuptaji R. Parmar & Others" reported in 2006(4) GLR 746.

4.0 On the other hand, learned Advocate for the opponent No.3 has supported the order of the Tribunal and has placed reliance on a decision of the Apex Court in the case of ***"National Insurance Company Ltd. Vs. Kusum Rai & Others"*** reported in (2006) 4 SCC 250 wherein at Para-14, the Apex Court has observed as under,

> "**14.** This Court in *Swaran Singh* clearly laid down that the liability of the Insurance Company vis-a-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle. The question as regards the liability of the owner vis-a-vis the driver being not possessed of a valid licence was considered in *Swaran Singh* stating:(SCC pp.336-37, para 89)
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> "*89.* **Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive.** Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of

vehicles mentioned in sub-section(2) of the said section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are:(a) motorcycle without gear, (b) motorcycle with gear, © invalid carriage, (d) light motor vehicle, (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section(2) of Section 10. they are 'goods carriage', 'heavy goods vehicle', 'heavy passenger motor vehicle', invalid carriage', 'light motor vehicle', 'maxi-cab', 'medium goods vehicle', 'medium passenger motor vehicle', 'motor-cab', 'motorcycle', 'omnibus', 'private service vehicle', 'semi-trailer', 'tourist vehicle', 'tractor', trailer and 'transport vehicle'. In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for 'motorcycle without gear' , [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for 'light motor vehicle' is found to be driving a 'maxi-cab', 'motor-cab' or 'omnibus' for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like

> mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence."

5.0 Heard. It was the case of the opponent before the Tribunal that on 11.06.1981, while he was traveling as a labourer in a truck driven by opponent No.2 who was driving it in a rash and negligent manner, the said truck met with an accident with another truck and on account of that he sustained severe bodily injuries. On perusal of documents placed on record it appears that on the day of incident when opponent No.4 who was proceeding on his truck ahead of opponent No.2, in order to save a buffalo, applied brakes of his truck, at that time opponent No.2 who was coming with full speed from behind could not control his vehicle and dashed the truck driven by opponent No.4, as he had not kept the reasonable distance from the truck of opponent No.4. The said fact is supported by 'Panchnama' (Exh.71)of the scene of offence wherein it has

been stated that the truck driven by opponent No.4 was lying at a distance of 8' feet from the rear truck. Therefore, the Tribunal has rightly come to the conclusion that, if opponent No.2 had kept a reasonable distance from the truck driven by opponent No.4, the accident in question could not have taken place. Hence, the Tribunal is justified in holding that the accident in question took place on account of the sole negligence on the part of the opponent No.2, and hence, opponent No.1 is entitled for compensation.

5.1 As regards the contention of the learned Advocate for the appellant that the Tribunal ought not to have exonerated the opponent No.3 from the liability to pay compensation and the judgments relied upon by him is concerned, it would be relevant to refer to Form-6 of the Central Motor Vehicles Rules, 1989 which is as under,

Form 6

[*See* Rule 16(1)]

(To be printed in book form of the size six centimeters by eight centimeters)

FORM OF DRIVING LICENCE

Name of the licence holder.....

Son/wife/daughter of.....

Passport size Photo-graph

Name to be written across the photograph.....

(Part of the seal and signature of the licensing authority to be on the photograph and part on the driving licence)

Specimen signature/ thumb impression of the holder of the licence

Signature and designation of the Licensing Authority

Driving licence number .....

Date of Issue .....

Name .....

Son/wife/daughter of .....

Temporary address/

official address (if any).....

Permanent address .....

Date of Birth .....

Educational qualifications.....

[Optional

Blood group

RH factor

The holder of this licence is licensed to drive throughout India vehicles of the following description:
Motor cycle [without gear]
Motor cycle with gear
Invalid carriage
Light motor vehicle
[Medium goods vehicle]
[Medium passenger motor vehicle]
Heavy goods vehicle
Heavy passenger motor vehicle]

A motor vehicle of the following description:

The licence to drive a motor vehicle other than transport vehicle is valid from ...to...	The licence to drive transport vehicle is valid from ... to...

Name and designation of
the authority who conducted
the driving test

Signature and designation
of the Licensing Authority.

Authorisation to drive transport vehicle

Number ..... Date .....

Authorised to drive transport vehicle with effect from .....Badge number.....

Signature.....

.....

Signature of the Licensing Authority.

Name and designation of the authority who conducted the driving test

Space for addition of the other classes of vehicles

Number..... Date .....

Also authorised to drive the following class or description of motor vehicles :

Name and designation of the authority who conducted the driving test	Signature and designation of the Licensing Authority.

Space of renewal of driving licence

The licence to drive a motor vehicle other than transport vehicle is hereby renewed.	The licence to drive transport vehicle is
from.....to.....	from.....to.....

Signature of Licensing Authority
from.....to.....
Signature of Licensing Authority
from.....to.....
Signature of Licensing Authority

Space for endorsement by court

Date	Section and Rule	Fine or other punishment	Signature of the endorsing authority
(1)	(2)	(3)	(4)

Space for endorsement by licensing authority

Date	Proceedings number and dated	Dis-qualification period From... to...	Signature of the Licensing Authority
(1)	(2)	(3)	(4)

5.2 From the above it clearly transpires that

in order to drive a particular type of vehicle it is compulsory to have a licence of that particular type of vehicle. The similar principles has been laid down by the Apex Court in the case of ***"National Insurance Company Ltd."***(Supra). In the case on hand, one witness-Narayanbhai Nemtaji, Clerk, R.T.O., Bhuj has clearly stated in his evidence (Exh.66)that the opponent No.2 was issued license to drive a transport vehicle and not a goods transport vehicle is involved in the accident. Therefore, the judgments relied upon by the learned Advocate for the appellant shall not apply in the present case, and hence, the Tribunal is justified in exonerating opponent No.3 from the liability to satisfy the claim.

5.3 I am, therefore, in complete agreement with the reasonings adopted and the finding arrived at by the Tribunal and find no reason to interfere in this appeal.

6.0 In the result, the appeal stands dismissed. No order as to costs.

(K.S. Jhaveri,J.)

Umesh/